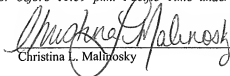


PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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Christina L. Malinosky

Applicant : John E. Lertzman, et al. Confirmation No. 3534  
Application No. : 10/612,518  
Filed : July 2, 2003  
Title : SYSTEM AND METHOD FOR COLLABORATIVE AFFINITY  
MARKETING  
  
Grp./Div. : 3688  
Examiner : Michael H. Goldman  
  
Docket No. : 50578/C995

**APPELLANT'S BRIEF**

Mail Stop Appeal Brief-Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Post Office Box 7068  
Pasadena, CA 91109-7068  
April 2, 2010

Commissioner:

**1. REAL PARTY IN INTEREST**

John E. Lertzman and John W. Hawekotte, Jr., the parties named in the caption, assigned their rights to the invention disclosed in the subject application through an Assignment recorded on date July 2, 2003 at reel 014291 and frame 0435 to Community Force, LLC. Therefore, Community Force, LLC is the real party in interest.

**2. RELATED APPEALS AND INTERFERENCES**

There are no related appeals and/or interferences for this Application.

**3. STATUS OF CLAIMS**

Claims 1-48 are pending, of which claims 22-37 and 39-47 are withdrawn. Claims 1-21, 38 and 48 stand rejected. Appellant appeals the rejection of claims 1-21, 38 and 48.

**4. STATUS OF AMENDMENTS**

No amendments to the claims were submitted after the Final Office Action mailed December 14, 2009.

**5. SUMMARY OF CLAIMED SUBJECT MATTER**

The subject matter of claims 1 and 30 relates to a method for collaborative affinity marketing including a processor, a plurality of aggregators, a participant, and a plurality of merchants. (FIG. 2, pages 9, lines 16-18,; and 14, lines 12-24). The collaborative affinity marketing computer system then receives enrollment information from the plurality of aggregators, the participant, and the plurality of merchants (FIGs. 2 and 3; page 15, lines 11-13, and 25-32) and assigns a participant identification code to the participant by said computer system, wherein the participant identification code keeps identity of the participant anonymous. (Pages 5, lines 13-15; 27, lines 1-7; and FIG. 14). The enrollment information of the plurality of aggregators, the participant, and the plurality of merchants are stored in a database, wherein no merchant is yet selected by the participant. (FIG. 1A; page13, lines 13-16, FIGs. 3 and 4, Database 500; and page 15, lines 11-17 and 22-31 setup process). An aggregator is selected from the plurality of aggregators by the participant. (FIG. 8; and page 23, lines 27-29).

When the participant initiates a purchase transaction with any of the merchants, the participant identification code is provided to the merchant (Pages 9, lines 21-23; and 16, lines 13-20) and the information about the participant identification code and an amount for the purchase transaction are stored in one or more storage media, by the merchant. (Page 13, lines 20-22). The stored participant identification code, the amount for the purchase transaction, and funds corresponding to a portion of the amount for the purchase transaction are received by the processor (pages 13, lines 22-28; and 14, lines 26-31) and the received funds are verified against the received amount for the purchase transaction by the processor. (Pages 17, lines 25-26; and

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18, lines 6-11). A portion of the funds received by the processor is sent to the selected aggregator (Page 19, lines 2-4).

Each of the processor, selected aggregator, participant, and merchant has a respective access right for accessing the stored information in the database and different portions of the stored information are accessible by the processor, selected aggregator, participant, and merchant based on the respective access rights, and the collaborative affinity marketing system is capable of enrolling the participant while maintaining participant's anonymity from the selected aggregator, the merchant, and the processor. (Page 5, lines 13-15; and page 13, line 30 to page 14, line 12).

**6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

Claims 1-21, 38, and 48[sic] are rejected under 35 U.S.C. § 102(e) as being anticipated by Burke, U.S. 2003/0083930 (Burke); and claim 48 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Burke in view of Feidelson, U.S. 6,345,261 (Feidelson).

**7. ARGUMENT**

**A. Rejection of claims 1 and 38 as being anticipated by Burke.**

To establish anticipation, the Examiner must show that the cited reference teaches each of the elements of the claim.

In regard to claims 1 and 38, these claims include the elements of "receiving . . . funds corresponding to a portion of the amount for the purchase transaction by the processor," "verifying the received funds against the received amount for the purchase transaction by the processor," and "sending a portion of the funds received by the processor to the aggregator." Burk does not teach any of the above limitations.

First, with respect to the limitation of "receiving . . . funds corresponding to a portion of the amount for the purchase transaction by the processor," Burke does not teach such limitation. The Examiner, citing paragraphs [0005] and [0015], states that "the processor is a central component of the system connecting the other components, hence the processor is always integral to every transaction thereby the processor inherently collect/computes a portion of each

transaction." (Office action, page 4, last paragraph). However, Burke, in the cited text, merely states that the "clearinghouse component connects the other three components via a variety of entry terminals." (Paragraph [0005], last line, underlining added.). This does not make the above claim limitation inherent.

In fact, Burke teaches the opposite of the above claim limitation by emphasizing that "the central clearinghouse component reports all transaction data to the merchant component that in turn sends a rebate check to the nonprofit component." (Paragraph [0007], underlining added.). See also, claim 1 of Burke: "having the central clearinghouse report all transaction to the merchant for having the merchant send a rebate to the nonprofit organization." (Underlining added). Moreover, Burke stresses that "the components operate individually while maintaining a high degree of intrasystemic harmony." (Paragraph [0068], underlining added.). Appellant respectfully submits that it is not appropriate to deem "receiving . . . funds corresponding to a portion of the amount for the purchase transaction" taught by the clearinghouse component of Burke, when Burke specifically teaches the opposite of that limitation by emphasizing that "the central clearinghouse report[s] all transaction to the merchant for having the merchant send a rebate to the nonprofit organization."

Additionally, the Examiner interprets the "batch transferring" of the data packet disclosed in paragraph [0023] of Burke as "identical to that of credit card batch processing, whereby (electronic) funds are transferred for processing. (Office action, page 15, first paragraph.). Appellant respectfully disagrees. One skilled in the art would readily realize that "batch processing is execution of a series of programs ("jobs") on a computer without manual intervention,' and that "batch jobs are set up so they can be run to completion without manual intervention, so all input data is preselected through scripts or command-line parameters." (See, for example, wikipedia.com). No reasonable broad interpretation of the claim language or the cited text would render "batch processing" as teaching the claim limitation of "receiving . . . funds corresponding to a portion of the amount for the purchase transaction by the processor."

Furthermore, the Examiner interprets "the [batch] processing as 'sending a portion of the funds received by the **processor to the aggregator.**'" However, in the same paragraph, the

Examiner states that the "batch processing" is performed at the cash register [point of sale], that is, at the merchant location and not the aggregator or processor.

**Second**, with respect to the limitation of "verifying the received funds against the received amount for the purchase transaction by the processor," the Examiner again interprets the "batch processing" as "including 'verifying the received funds against the received amount for the purchase transaction by the processor.'" (Office action, page 15, last three lines to page 16, first three lines). Once more, a mere recitation of "batch processing" does not teach the specific and detail claim limitation of "verifying the received funds against the received amount." Moreover, even assuming the Examiner was correct in interpreting "batch processing" as "verifying the received funds against the received amount," this "batch processing" is performed at the merchant (cash register) site in Burke and not the processor (central clearinghouse) site.

**Third**, with respect to the limitation of "sending a portion of the funds received by the processor to the aggregator," Burke does not disclose such limitation. As explained above, Burke's central clearinghouse does not receive or send any funds. In fact, Burke is very clear about the central clearinghouse reporting "all transaction data to the merchant component that in turn sends a rebate check to the nonprofit [aggregator] component." (Paragraph [007], lines 4-7, emphasis added.). Additionally, there is no suggestion in Burke about sending a portion of the funds received.

As a result, for at least any of the above three reasons, the Patent Office has failed to establish that the cited reference, Burke teach all of the elements of the claims 1 and 38. Accordingly, it is respectfully requested that the anticipation rejection of claims 1 and 38 be overturned.

**B. Rejection of claims 2-21, and 48 as being anticipated by Burke.**

The dependent claims 2-21, and 48 are dependent from the independent claim 1 and therefore include all the limitations of the independent claim 1 and additional limitations therein. Accordingly, these claims are also allowable over the cited references, as being dependent from an allowable independent claim and for the additional limitations they include therein.

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Consequently, it is respectfully requested that the rejection of claims -21, and 48 be overturned.

**Conclusion**

Accordingly, it is submitted that the rejections of claims 1-21, and 38 based on 35 U.S.C. § 102(e); and rejection of claim 48 based on 5 U.S.C. § 103(a) be overturned.

**8. CLAIM APPENDIX**

1. A method for collaborative affinity marketing including a processor, a plurality of aggregators, a participant, and a plurality of merchants, the method comprising:

receiving by a collaborative affinity marketing computer system enrollment information from the plurality of aggregators, the participant, and the plurality of merchants;

assigning a participant identification code to the participant by said computer system, wherein the participant identification code keeps identity of the participant anonymous;

storing the enrollment information of the plurality of aggregators, the participant, and the plurality of merchants in a database, wherein no merchant is yet selected by the participant;

selecting by the participant a selected aggregator from the plurality of aggregators using a participant computer terminal;

providing the participant identification code to any of the plurality of merchants, when the participant initiates a purchase transaction with said any of the plurality of merchants;

storing information about the participant identification code and an amount for the purchase transaction in one or more storage media, by said any of the plurality of merchants;

receiving the stored participant identification code, the amount for the purchase transaction, and funds corresponding to a portion of the amount for the purchase transaction by the processor using said collaborative affinity marketing computer system;

verifying the received funds against the received amount for the purchase transaction by the processor; and

sending a portion of the funds received by the processor to the selected aggregator,

wherein each of the processor, selected aggregator, participant, and merchant has a respective access right for accessing the stored information in the database and different portions of the stored information are accessible by the processor, selected aggregator, participant, and merchant based on the respective access rights, and wherein the collaborative affinity marketing

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system is capable of enrolling the participant while maintaining participant's anonymity from the selected aggregator, the merchant, and the processor.

2. The method of claim 1, wherein the participant enrolls with the processor using said participant computer terminal.

3. The method of claim 1, wherein the participant enrolls with the selected aggregator using said participant computer terminal.

4. The method of claim 3, further comprising sending the participant identification code to the processor without disclosing the identity of the participant.

5. The method of claim 1, wherein the providing the participant identification code to the merchant comprises of presenting a participant card to the merchant.

6. The method of claim 5, wherein the participant card is one or more of a group of a bar coded card, a card with magnetic strip, a smart card, and a radio frequency identification card.

7. The method of claim 1, wherein the sending a portion of the funds received by the processor from the merchant to the selected aggregator comprises of providing a credit to the aggregator.

8. The method of claim 1, wherein the purchase transaction is an on-line transaction and the participant identification code is provided to the merchant electronically.

9. The method of claim 1, wherein the providing the participant identification code to the merchant comprises of scanning a fingerprint or retina of the participant.

10. The method of claim 1, wherein the participant identification code is stored in a merchant sales tracking system as an item, when the participant initiates a purchase transaction.

11. The method of claim 1, wherein the selected aggregator is one or more of the group a not-for-profit organization, a marketer organization or a product distributor.



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12. The method of claim 1, wherein the enrollment information of the plurality of aggregators, participant, and merchant are stored in a processor database.

13. The method of claim 12, wherein the processor database is accessible via a processor website.

14. The method of claim 1, wherein the funds corresponding to a portion of the amount of purchase transaction are sent to the processor via electronic fund transfer.

15. The method of claim 1, wherein the portion of the funds received by the processor from the merchant are sent to the selected aggregator via electronic fund transfer.

16. The method of claim 1, further comprising storing historical data for each of the processor, selected aggregator, participant, and merchant.

17. The method of claim 1, further comprising validating the stored participant identification code, the amount of purchase transaction, and the funds corresponding to a portion of the amount of purchase transaction by the processor.

18. The method of claim 17, further comprising processing the validated stored participant identification code, amount of purchase transaction, and funds corresponding to a portion of the amount of purchase transaction by the processor for statistical and demographic analysis.

19. The method of claim 1, further comprising sending a report generated by the merchant to the processor.

20. The method of claim 1, further comprising sending a report generated by the processor to the selected aggregator.

21. The method of claim 1, further comprising generating a report by the processor for the participant.

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22. (Withdrawn) A method for coordinating and managing rebates by a merchant of a portion of a purchase made by a participant to an aggregator, the method comprising:

registering with one or more registry by the aggregator, the participant, and the merchant;  
generating a participant identification code for the participant and a processor identification code for the processor;

storing registration information of the aggregator, participant, and merchant;

providing the participant identification code and the processor identification code to the merchant, when the participant initiates the purchase with the merchant;

storing the participant identification code and amount of purchase transaction by the merchant as sale tracking item;

sending the stored participant identification code, the stored amount of purchase transaction, and funds corresponding to a portion of the amount of purchase transaction to the processor based on the stored processor identification code; and

sending a portion of the funds received by the processor from the merchant to the aggregator.

23. (Withdrawn) The method of claim 22, wherein the participant registers with the processor and selects the aggregator as a desired aggregator.

24. (Withdrawn) The method of claim 22, wherein the participant registers with the aggregator.

25. (Withdrawn) The method of claim 24, further comprising sending the participant identification code to the processor without disclosing the identity of the participant.

26. (Withdrawn) The method of claim 22, wherein each of the processor, aggregator, participant, and merchant has a respective access right for accessing the stored information and different portions of the stored information are accessible by the processor, aggregator, participant, and merchant based on their respective access right.

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27. (Withdrawn) The method of claim 22, wherein the participant is capable of enrolling with the collaborative affinity marketing while maintaining participant's anonymity.

28. (Withdrawn) The method of claim 22, wherein the step of providing the participant identification code to the merchant comprises of presenting to the merchant one or more of the group a bar coded card, a card with a magnetic strip, a smart card, and a radio frequency identification card.

29. (Withdrawn) The method of claim 22, wherein the purchase transaction is an on-line transaction and the participant identification code is provided to the merchant electronically.

30. (Withdrawn) The method of claim 22, wherein the participant identification code and the processor identification code are stored in a merchant sale tracking system as an item, when the participant initiates a purchase transaction.

31. (Withdrawn) The method of claim 22, wherein the registration information of the aggregator, participant, and merchant are stored in a processor database.

32. (Withdrawn) The method of claim 31, wherein the processor database is accessible via a processor website.

33. (Withdrawn) The method of claim 22, wherein the funds corresponding to a portion of the amount of purchase transaction and the portion of the funds received by the processor from the merchant are sent to the processor via electronic fund transfer.

34. (Withdrawn) The method of claim 22, further comprising sending a report generated by the merchant to the processor.

35. (Withdrawn) The method of claim 22, further comprising sending a report generated by the processor to the aggregator.

36. (Withdrawn) The method of claim 22, further comprising generating a report by the processor for the participant.

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37. (Withdrawn) The method of claim 22, wherein the step of sending a portion of the funds received by the processor from the merchant to the aggregator comprises of providing a credit to the aggregator.

38. A system for collaborative affinity marketing including a processor, a plurality of aggregators, a participant, and a plurality of merchants, comprising:

means for receiving enrollment information from the plurality of aggregators, the participant, and the plurality of merchants;

means for assigning a participant identification code to the participant, wherein the participant identification code keeps identity of the participant anonymous;

a database for storing the enrollment information of the plurality of aggregators, the participant, and the plurality of merchants, wherein no merchant is yet selected by the participant;

means for selecting by the participant a selected aggregator from the plurality of aggregators;

means for providing the participant identification code to any of the plurality of merchants, when the participant initiates a purchase transaction with said any of the plurality of merchants;

means for storing information about the participant identification code and an amount for the purchase transaction, by said any of the plurality of merchants;

means for receiving the stored participant identification code, the amount for the purchase transaction, and funds corresponding to a portion of the amount for the purchase transaction by the processor;

means for verifying the received funds against the received amount for the purchase transaction by the processor; and

means for sending a portion of the funds received by the processor to the selected aggregator,

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wherein each of the processor, selected aggregator, participant, and merchant has a respective access right for accessing the stored information in the database and different portions of the stored information are accessible by the processor, selected aggregator, participant, and merchant based on the respective access rights, and wherein the collaborative affinity marketing system is capable of enrolling the participant while maintaining participant's anonymity from the selected aggregator, the merchant, and the processor.

39. (Withdrawn) The system of claim 38, further comprising means for enrolling the participant with the processor.

40. (Withdrawn) The system of claim 38, further comprising means for enrolling the participant with the selected aggregator.

41. (Withdrawn) The system of claim 38, further comprising means for sending the participant identification code to the processor without disclosing the identity of the participant.

42. (Withdrawn) The system of claim 38, wherein the means for providing the participant identification code to the merchant comprises means for providing one or more of a group of a bar coded card, a card with magnetic strip, a smart card, and a radio frequency identification card to the merchant.

43. (Withdrawn) The system of claim 38, the means for storing enrollment information of the plurality of aggregators, participant, and merchant is a processor database accessible via a processor website.

44. (Withdrawn) The system of claim 38, wherein the means for sending a portion of the funds received by the processor from the merchant to the selected aggregator comprises of means for providing a credit to the selected aggregator.

45. (Withdrawn) The system of claim 38, further comprising means for storing the participant identification code in a merchant sale tracking system as an item.

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46. (Withdrawn) A system for coordinating and managing rebates by a merchant of a portion of a purchase made by a participant to an aggregator, the method comprising:

means for registering with one or more registry by the aggregator, the participant, and the merchant;

means for generating a participant identification code for the participant and a processor identification code for the processor;

means for storing registration information of the aggregator, participant, and merchant;

means for providing the participant identification code and the processor identification code to the merchant, when the participant initiates the purchase with the merchant;

means for storing the participant identification code and amount of purchase transaction in a merchant sale tracking system as an item;

means for sending the stored participant identification code, the stored amount of purchase transaction, and funds corresponding to a portion of the amount of purchase transaction to the processor based on the stored processor identification code; and

means for sending a portion of the funds received by the processor from the merchant to the aggregator.

47. (Withdrawn) A computer-readable medium having stored thereon a set of instructions including instruction for coordinating and managing rebates by a merchant of portion of a purchase made by a participant to an aggregator through a web site interface the instructions, when executed by a plurality of computers connected to the Internet, cause the computers to perform the steps of:

enrolling with a website by the aggregator, the participant, and the merchant;

assigning a participant identification code to the participant;

storing enrollment information of the aggregator, participant, and merchant;

providing the participant identification code to the merchant, when the participant initiates a purchase transaction with the merchant;

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storing the participant identification code and amount of purchase transaction by the merchant;

sending the stored participant identification code, the amount of purchase transaction, and funds corresponding to a portion of the amount of purchase transaction to the processor; and

sending a portion of the funds received by the processor from the merchant to the aggregator,

wherein each of the processor, aggregator, participant, and merchant has a respective access right for accessing the stored information and different portions of the stored information are accessible by the processor, aggregator, participant, and merchant based on their respective access right.

48. The method of claim 1, further comprising:

storing a contract rebate percentage for each of the plurality of merchants;

receiving transaction data and financial information by the processor from the merchant;

and

validating the received financial information and validating the received funds against the stored contract rebate percentage for the merchant.

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**9. EVIDENCE APPENDIX**

None.



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**10. RELATED PROCEEDING APPENDIX**

None.

Respectfully submitted,

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By



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626/795-9900

RRT/clv

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